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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/034,983 | 12/27/2001 | Joseph Michael Lewis | 71042 | 1103 |

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Cargill, Incorporated
Law Department
P.O. Box 5624
Minneapolis, MN 55440-5624

EXAMINER

KEENAN, JAMES W

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3652

DATE MAILED: 12/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/034,983

Applicant(s)

LEWIS ET AL.

Examiner

James Keenan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) 9-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2, 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. Applicant's election of Group I in Paper No. 10 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 9-44 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 10.
3. The disclosure is objected to because of the following informalities: the written specification lacks a description of figure 4a, and on page 11, lines 14-15, it is not clear what is meant by "to allow moisture to prevent moisture".

Appropriate correction is required.
4. The information disclosure statement filed 10/24/02 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the print quality of the "Feed Facility Operations on Track" reference renders the document unreadable, and the "Tarps Direct" catalog should have those portions which applicant believes relevant pointed out. These documents have been placed in the application file, but the information referred to therein has not been considered as to the merits. All other documents have been considered. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement

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or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e).

See MPEP § 609 ¶ C(1).

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not understood what is meant by "railroad in aluminum".

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bostrom et al (US 5,046,912).

Bostrom et al show a method of supplying bulk material, including loading the material into a rail container, transporting the container, and inverting the container to remove the material therefrom. Bostrom et al discloses that the material may be grain,

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and that the container may be a covered rail car which cover can be removed or opened prior to unloading. Bostrom et al do not explicitly state that the material is moist grain by-products.

Nevertheless, it would have been obvious for one of ordinary skill in the art at the time of the invention to have modified Bostrom et al's process to include moist grain by-products, as this is simply a particular type of grain, and therefore a mere design expediency, especially since no specific structure germane to handling moist grain by-products is set forth.

9. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bostrom et al in view of Wymer et al (US 4,823,708, cited by applicant).

Wymer et al show that it is well known to utilize a flexible cover or tarp to cover an open-topped railcar containing grain, and in light of this, it would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the process of Bostrom et al by including this feature, as it would simply be an art recognized design expediency which would neither require undue experimentation nor produce unexpected results.

10. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bostrom et al in view of Auld et al (US 1,496,196).

Bostrom et al show a below-grade pit 25 for receiving the dumped material, but do not disclose a material moving device for further transport of the material.

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Auld et al show a method of transporting bulk materials including a railcar inverting device D which dumps the material to a below-grade conveyor 5 for subsequent transfer to loading terminal 30 where it is loaded onto a transportation vehicle for further distribution.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the process of Bostrom et al by utilizing a conveyor in the pit for moving the material to a transportation vehicle for further distribution, as shown by Auld et al, as this would enhance the usefulness and flexibility of the system.

11. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bostrom et al in view of Auld et al, as applied to claim 6 above, and further in view of Wymer et al and Lydic (US 6,244,191).

As noted above re claim 3, Bostrom et al does not show a flexible tarp, and it would have been an obvious design expediency to have included this feature in view of Wymer et al. Bostrom et al, even as so modified, also does not show the railcar to be made of aluminum (assuming that is what claim 8 was intended to recite).

Lydic shows a railroad hopper car for grain and other bulk materials the body of which is made of aluminum.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the process of Bostrom et al by providing at least the body of the railcar with aluminum, as shown by Lydic, as this would provide well known advantages such as corrosion resistance and lighter weight.


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12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 703-308-2559. The examiner can normally be reached on Monday through Thursday, although this may vary.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 703-308-3248. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


James Keenan
Primary Examiner
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jwk

12/4/03